IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Pratap Singh Vs. State of Rajasthan
(D.B. Criminal Appeal No.481/2003)

2. Moti Lal & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.480/2003)

3. Santosh Singh Vs. State of Rajasthan
(D.B. Criminal Appeal No.426/2003)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 14-2-2003 in Sessions Case No.124/2001 passed by Shri Udai Chand Barupal, RHJS, Sessions Judge Bundi.

Date of Judgment: April 19, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Arvind Kumar Gupta] for the appellant in Appeal No.481/2003.
Mr. Kamlakar Sharma]
Mr. Rinesh Gupta]
Mr. Harsh Saini]
Mr. Vaibhav Gehlot]
Mr. J.K.Dhingra, for the appellant in Appeal No.426/2003.
Mr. Surendra Sharma, for the appellants in Appeal No.480/2003.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

In these appeals, the appellants, five in number, have impugned the judgment dated February 14, 2003 of the learned Sessions Judge Bundi whereby the appellants were convicted and sentenced as under:-

Santosh Singh, Pratap Singh, Moti Lal, Kishan Lal and Badri Lal:
U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for six months.

U/s.147 IPC:

Each to suffer simple imprisonment for six months and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.148 IPC:

Each to suffer simple imprisonment for one year and fine of Rs.1000/-, in default to further suffer simple imprisonment for three months.

The substantive sentences were ordered to run concurrently.

2. The prosecution case is as under:-

Mathura Lal (Pw.2) handed over a written report (Ex.P-4) to SHO Police Station Lakheri District Bundi on January 8, 2001 at 10.15 PM at District Hospital Lakheri stating therein that on the said day around 6.00 PM his grand daughter Kavita informed him that his father was beaten up. He then saw that his son Banwari was lying unconscious. On inquiry he came to know that Badri Lal, Kishan Lal, Moti Lal and two Sardars caused injuries to Banwari with sword and lathi. Banwari was immediately removed to hospital. On that report case under sections 147, 148, 307 and 323/149 IPC and Section 3 SC/ST (PA) Act was registered and investigation commenced. During the course of investigation charge sheet was filed. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Sessions Judge Bundi. Charges under sections 147, 148 and 302/149 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 17 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants

claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard learned counsel for the appellants and learned Public Prosecutor and with their assistance scanned the material on record. We find that prior to his death, the injuries sustained by Banwari were examined vide injury report (Ex.P-6), which reads as under:-

1. Lacerated wound 3 x 2xm on skull on parietal region.
2. Lacerated wound 4 x 2cm about 3cm below the Ist injury.
3. Lacerated wound 5 x 2cm about 2cm below 2nd injury
4. Haematoma blue in colour on Lt. eye lid with swelling.
5. Contusion 3 x 2cm on Rt. side of chest
6. Abrasion 3 x 2cm on back of Lt. elbow joint.

Banwari died on January 24, 2001 i.e. after 16 days of the incident. Dr. D.K.Sharma (Pw.17), Autopsy Surgeon, who drew Post Mortem Report (Ex.P-10), opined that the cause of death of Banwari was septicemia coma brought about as a result of injuries to brain and skull.

4. Evidence of Ram Prasad (Pw.1), Bhawani Shankar (Pw.3) and Kavita (Pw.4) is the back bone of the case and learned trial Judge founded the conviction of the appellants on the testimony of these witnesses.

5. Ram Prasad (Pw.1), real brother of deceased, in his deposition stated that on the day of incident he and his brother Banwari were sitting on the flour mill of Lachhi Ram Rajendra ji, Banwari then proceeded to meet one Narain ji. While Banwari was crossing `Bad' (boundary made of thrones) of Badri Lal, he (Badri Lal) abused Banwari. After hot exchanges

they both scuffled and Badri Lal inflicted lathi blow on the head of Banwari. Ram Pyari, the wife of Badri, also given beating to Banwari. Ram Prasad then took Banwari to his house but Banwari came back to the flour mill. Thereafter Pratap Singh and Kanya Bai offered Banwari tea and they took Banwari to the house of Kishan Lal. Kishan Lal, Badri Lal, Ram Pyari, Kanya, Moti Lal and Santosh Singh bolted the house from inside and beat Banwari with lathis. Bhawani Shankar then pushed the door and brought Banwari out. In the cross examination Ram Prasad admitted that he did not accompany injured Banwari to the hospital. He also admitted that he did not inform his father that he and Bhawani Shankar had seen the incident. He further stated that:-

> मारपीट मकान के अन्दर हुई थी बाहर नहीं की थी। मारपीट दरवाजा लगाने के बाद अन्दर की थी। मकान के बाहर से घटना दिखाई नहीं दे रही थी लेकिन जोर जोर से आवाज आ रही थी।

He also stated that police arrived on January 9, 2001 at 1.30 PM. He admitted that he did not know Pratap Singh and Santosh Singh and Banwari was in the habit of consuming liquor. He further stated that since he fell asleep around 10-11 PM he was not in a position to say as to whether the police came in the village in the night.

6. Mathura Lal (Pw.2) deposed that Kavita did not inform him as to who caused injuries to Banwari Lal since she did not see the incident from her eyes (कविता ने मुझे यह नहीं बताया कि बनवारी लाल के किसने चोट मारी उसने मारते हुए नहीं देखा था) He however deposed that Bhawani Shankar and Ram Prasad informed him that Kishan Lal, Ram Kanya, Moti, Ram Pyari, Badri Lal, Pratap Singh and Santosh Singh gave beating to Banwari. This deposition is contrary to the

statement of Ram Prasad who deposed that he and Bhawani Shankar did not inform his father (Mathura Lal) as to who caused injuries to Banwari.

7. Bhawani Shankar (Pw.3) repeated the version narrated by Ram Prasad. He however admitted that:-

> यह कहना सही है कि उक्त दरवाजा बन्द होने के बाद मकान के अन्दर क्या हो रहा है यह दिखाई नहीं देता है।

He further stated that:

> मथुरा लाल को मैंने घटना के बारे में कुछ नहीं बताया, राम प्रसाद ने बताया था।

8. Kavita (Pw.4), aged 12 years, became eye witness at the trial and narrated the incident.

9. Fact situation that emerges from the material on record may be summarized thus:-

(i) Mathura Lal (Pw.2), who lodged FIR, did not see occurrence. In his deposition he stated that Ram Prasad (Pw.1) and Bhawani Shankar (Pw.3) informed him that the appellants had given beating to Banwari.

(ii) Ram Prasad (Pw.1) on the other hand deposed that he did not inform his father Mathura Lal that he and Bhawani Shankar had seen the incident.

(iii) Mathura Lal (Pw.2) deposed that Kavita (Pw.4) did not inform him as to who had caused injuries to Banwari, since Kavita did not herself see the incident.

(iv) Kavita (Pw.4) on the other hand became eye witness of the

occurrence.

(v) Ram Prasad was real brother of Banwari even then he did not care to take Banwari to the hospital. He did not even think to report the matter to the police. After the incident he calmly went to his house and slept.

(vi) The place of incident, according to the witnesses, was the house of Kishan Lal, which was bolted from inside at the time of alleged incident.

10. For weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities. Neither the Evidence Act nor any other Act lays down any law governing the question as to which statement of a witness should be believed or should not be believed. The question depends upon so many circumstances and no hard and fast rule can be laid down. The law has left it to the court to decide whether the evidence should be believed or not and if believed, what weight should be attached to it or what effect should be given to it. However while appreciating the testimony of witnesses the Judge may have regard to the following considerations:-

(i) Integrity of witnesses;
(ii) Ability of witnesses;
(iii) The number and consistency with each other;
(iv) The conformity of their testimony with experience; and
(v) The conformity of their testimony with collateral circumstances.

11. Their Lordships of the Supreme Court in H.P. Administration Vs. Om Prakash (AIR 1972 SC 975) indicated that in appreciating the evidence against the accused the prime duty of a court is firstly to ensure

that the evidence is legally admissible that the witnesses are credible and have no interest in implicating the accused or have ulterior motive.

12. Privi Council in Bhoj Raj Vs. Sita Ram (AIR 1936 PC 60) observed that criticism that certain evidence appears to be got by rote or learnt by heart though not without weight, is by no means conclusive. Evidence substantially true not infrequently assumes too perfect a form and witnesses such as children not infrequently get a story by heart which is none the less a true story. The real tests are how consistent the story is with itself how it stands the test of cross examination and how far it fits in the test of the evidence and the circumstances of the case.

13. Apex Court in Vedivelu vs. State (AIR 1967 SC 614) classified the oral testimony into three categories:-

(i) wholly reliable;

(ii) wholly unreliable;

(iii) neither wholly reliable nor wholly unreliable.

14. In Harpal Singh Vs. Devendra Singh (AIR 1997 SC 2914) the Hon'ble Supreme Court propounded a sound rule of appreciation of evidence. It was held that if the testimony of a witness is to be used as the sole basis of conviction, it should be of a such caliber as to be regarded as wholly reliable. The blemish attached to a witness as partisan witnesses, stands in the way of his evidence becoming wholly reliable and hence without adequate reassurance from other circumstances or materials it may not be safe to make the uncorroborated evidence of such a witness, the sole basis for reversing the order of acquittal.

15. The worth of testimony related or interested witnesses is to be weighed and assessed like the evidence of any other witness with the difference that court while assessing the value of the statement of such a witness would be on its tiptoe and guard and would examine and scrutinise his statement more carefully. The law only requires that in case the eye witnesses are relations, the court should scrutinise their evidence with more care and caution. Mere relationship with the deceased is no ground to discard the testimony of a witness.

16. On a deeper scrutiny of the testimony of Ram Prasad, Bhawani Shankar, Mathura Lal and Kavita from the point of view of trustworthiness we find them highly unreliable witnesses. It is highly unlikely that Ram Prasad, the real brother of Banwari, would not have accompanied injured Banwari to the hospital. The attitude of Ram Prasad was not the attitude of real brother. It is also inexplicable that even after seeing the incident, why Ram Prasad did not make any attempt to approach the police. We find it difficult to believe that a real brother would go to sleep leaving his injured brother at the mercy of the God. Similar is the conduct of witness Bhawani Shankar. Neither he made attempt to intervene nor did he report the matter to police. He was a chance witness and he could not explain as to why he was present in front of the house of Kishan Lal. The material contradictions already noticed by us in the testimony of Mathura Lal, Kavita, Ram Prasad and Bhawani Shankar, go to show that nobody had seen the incident. This possibility cannot be ruled out that after Banwari was found lying injured and unconscious, the Investigating Officer with the helps of Mathura Lal, Ram Prasad, Bhawani Shankar and Kavita concocted a false case against the

appellants.

17. Learned trial court did not properly appreciate the evidence adduced by the prosecution and committed illegality in convicting and sentencing the appellants. In our opinion, the appellants are entitled to benefit of doubt.

18. For these reasons, we allow the appeals and set aside the impugned judgment dated February 14, 2003 of the learned Sessions Judge, Bundi.

We acquit appellants Santosh Singh, Pratap Singh, Moti Lal, Kishan Lal and Badri Lal of the charges under sections 147, 148 and 302/149 IPC.

Appellants Santosh Singh, Pratap Singh, Moti Lal, Kishan Lal and Badri Lal, who are in jail, shall be set at liberty forthwith if they are not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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